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OFFICE OF PETITIONS

In re Application of :
Namazian et al. : DECISION GRANTING
Application No. 10/796,592 : PETITION
Filed: March 5, 2004 :
Attorney Docket No. A68800 :
:

This is a decision on the petition under 37 CFR 1.10(d), filed July 26, 2004, requesting that the above-identified application be accorded a filing date of March 5, 2004, rather than the presently accorded filing date of March 7, 2004.

Petitioner requests the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on March 5, 2004. Petitioner acknowledges that the date of deposit in Express Mail shown on the Express Mail receipt No. ER561922466US is March 7, 2004, but argues that the application was actually deposited with the United States Postal Service (USPS) on March 5, 2004.

Paragraph (a) of 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See §1.6(a).

37 CFR 1.10(a) (Emphasis added).

Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

37 CFR 1.10(d) (Emphasis added).

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in 'Express Mail Post Office to Addressee' service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS."

In present petition, Richard E. Backus, attorney for petitioner, stated that he deposited the above-identified application in an Express Mail deposit box on March 5, 2004, in San Francisco, California at 3:00 PM prior to last scheduled pickup for that day (4:00 PM). Mr. Backus further stated that after making the deposit he returned to the office and wrote a letter to his client reporting that the application had been filed that day

and that the filing date would be the date of deposit in Express Mail (March 5, 2004). A copy of the letter dated March 5, 2004, accompanies the present petition.

In view of the above, petitioner has satisfied the requirements of 37 CFR 1.10(d). Accordingly, the petition is granted.

The Office of Initial Patent Examination is directed to correct the filing date to March 5, 2004, and to mail a corrected filing receipt.

Telephone inquiries specific to this matter should be directed to undersigned at (571) 272-3211.

Christina Tartera Donnell

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